

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

CP:E:EO:T:4

DEC 2 1995

Employer Identification Number: [REDACTED]

Key District: Southeast (Baltimore)

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code. Based upon the information submitted we conclude that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You are organized under the laws of the State of [REDACTED] for the purpose of owning, operating and maintaining residential facilities for the low and very low income families and individuals. You anticipate purchasing multi-family residential rental facilities and rehabilitating these facilities for occupancy. However, at this time you do not own and operate any facilities and neither are you negotiating for the purchase of any facilities. You have represented that after you have been recognized by the Service as an organization described under section 501(c)(3) of the Code, you will purchase the facilities with the proceeds of tax-exempt bonds.

You have stated that after you become operational all of your officers, who are also members of your board of directors, will receive a certain amount of salary. We have previously requested that in order to avoid private benefit and private inurement issues, you appoint additional directors to your board to establish the salaries of your officers. You have stated that you may do so at a later date, depending upon your size and needs.

Section 501(a) of the Internal Revenue Code provides for the exemption from federal income tax of organizations described in section 501(c)(3). Section 501(c)(3) describes organizations which, among others, are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i)(a)-(b) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and the articles do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. This section cross references the definition of private shareholder which is contained in paragraph (c) of section 1.501(a)-1. That paragraph provides that the words private shareholder or individual in section 501 refers to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection of the regulations, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 70-585, 1970-2 C.B. 115, provides that a nonprofit housing organizations created to aid low and moderate income families by lessening neighborhood tensions, eliminating prejudice and discrimination, and combating community

deterioration may qualify for exemption under section 501(c)(3) of the Code.

Announcement 95-37, 1995-20 I.R.B. 18 expounds the standards used by the Service in determining whether charities providing housing are eligible for tax-exempt status under section 501(c)(3) of the Code. The Announcement includes a safe harbor for charities that serve the housing needs of the poor and distressed. Under the safe harbor, the organization must establish that for each project owned by the organization, (a) at least 75 percent of the units are occupied by residents that qualify as low-income and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit.

Prior to the Service recognizing you as an organization described in section 501(c)(3) of the Code, you must establish that you are organized and operated exclusively for charitable purposes. To meet the operational test you must establish (i) you engage primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3), and (ii) you are not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 5.01 of the Revenue Procedure 90-27, 1990-1 C.B. 514, provides that a ruling or determination letter will be issued to an organization, provided its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Under section 5.02 of Rev. Proc. 90-27, exempt status of an organization will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

Section 8.01 of Revenue Procedure 94-4, 1994-1 C.B. 334, provides that the Service may decline to issue a ruling or a determination letter whenever warranted by the facts or circumstances of a particular case.

You have stated that you anticipate purchasing multi-family residential rental housing projects in the future which will be occupied by low and very low income families. You are currently not negotiating with any party for the purchase of such a facility. Additionally, you do not plan to begin negotiations until you have received a determination letter from the Service that you are an organization described under section 501(c)(3) of the Code. As stated in Announcement 95-37, supra, an organization is considered charitable if it can establish that each project owned by it is occupied by persons which meet the income levels stated in the Announcement. At this time you have no operations or evidence of potential operations which will assist the Service in determining that you will be operated exclusively for exempt purposes.

You have also stated that after you have purchased a facility the salaries for the officers will be based upon reasonability, affordability, experience and the number of hours required for the job performed by each person. All of your officers are members of your board of directors and you do not have independent directors who will establish the salaries for such directors. Without evidence of your operations, at this time, we cannot determine whether you will not be operated for the benefit of private interests such as your officers and directors.

Based upon the above discussion, we conclude that you have do not qualify for exemption under section 501(c)(3) of the Code. You are required to file federal income tax returns on Form 1120.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
CP:E:EO:T:4-SBL, Room 6236
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(Signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 4

CP:E:EO:T:4 CP:E:EO:T:4
Cough [Signature]